

HONORABLE ROBERT J. BRYAN  
HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEREMY DE JONG,

Plaintiff,

v.

GREAT LAKES SERVICES, LLC,

Defendant.

CASE NO. 3:19-cv-05354

**STIPULATED  
PROTECTIVE  
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal

1 principles, and it does not presumptively entitle parties to file confidential information  
2 under seal.

3 2. "CONFIDENTIAL" MATERIAL

4 "Confidential" material shall include the following documents and tangible things  
5 produced or otherwise exchanged: information regarding a party's medical records;  
6 financial statements; correspondence among management personnel regarding  
7 confidential business operations; employee handbook; customer information; and  
8 documentation regarding Defendant's business plans, strategies, and projections.

9 3. SCOPE

10 The protections conferred by this agreement cover not only confidential material  
11 (as defined above), but also (1) any information copied or extracted from confidential  
12 material; (2) all copies, excerpts, summaries, or compilations of confidential material; and  
13 (3) any testimony, conversations, or presentations by parties or their counsel that might  
14 reveal confidential material.

15 However, the protections conferred by this agreement do not cover information  
16 that is in the public domain or becomes part of the public domain through trial or  
17 otherwise.

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

19 4.1 Basic Principles. A receiving party may use confidential material that is  
20 disclosed or produced by another party or by a non-party in connection with this case  
21 only for prosecuting, defending, or attempting to settle this litigation. Confidential  
22 material may be disclosed only to the categories of persons and under the conditions  
23 described in this agreement. Confidential material must be stored and maintained by a  
24 receiving party at a location and in a secure manner that ensures that access is limited to  
25 the persons authorized under this agreement.

1           4.2    Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the designating party, a receiving party  
3 may disclose any confidential material only to:

4                   (a)    the receiving party's counsel of record in this action, as well as  
5 employees of counsel to whom it is reasonably necessary to disclose the information for  
6 this litigation;

7                   (b)    the officers, directors, and employees (including in house counsel) of  
8 the receiving party to whom disclosure is reasonably necessary for this litigation, unless  
9 the parties agree that a particular document or material produced is for Attorney's Eyes  
10 Only and is so designated;

11                  (c)    experts and consultants to whom disclosure is reasonably necessary  
12 for this litigation and who have signed the "Acknowledgment and Agreement to Be  
13 Bound" (Exhibit A);

14                  (d)    the court, court personnel, and court reporters and their staff;

15                  (e)    copy or imaging services retained by counsel to assist in the  
16 duplication of confidential material, provided that counsel for the party retaining the  
17 copy or imaging service instructs the service not to disclose any confidential material to  
18 third parties and to immediately return all originals and copies of any confidential  
19 material;

20                  (f)    during their depositions, witnesses in the action to whom disclosure  
21 is reasonably necessary and who have signed the "Acknowledgment and Agreement to  
22 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by  
23 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
24 confidential material must be separately bound by the court reporter and may not be  
25 disclosed to anyone except as permitted under this agreement;

1 (g) the author or recipient of a document containing the information or  
2 a custodian or other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material. Before filing confidential material or  
4 discussing or referencing such material in court filings, the filing party shall confer with  
5 the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine  
6 whether the designating party will remove the confidential designation, whether the  
7 document can be redacted, or whether a motion to seal or stipulation and proposed order  
8 is warranted. During the meet and confer process, the designating party must identify  
9 the basis for sealing the specific confidential information at issue, and the filing party  
10 shall include this basis in its motion to seal, along with any objection to sealing the  
11 information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed  
12 and the standards that will be applied when a party seeks permission from the court to  
13 file material under seal. A party who seeks to maintain the confidentiality of its  
14 information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not  
15 the party filing the motion to seal. Failure to satisfy this requirement will result in the  
16 motion to seal being denied, in accordance with the strong presumption of public access  
17 to the Court's files.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
20 party or non-party that designates information or items for protection under this  
21 agreement must take care to limit any such designation to specific material that qualifies  
22 under the appropriate standards. The designating party must designate for protection  
23 only those parts of material, documents, items, or oral or written communications that  
24 qualify, so that other portions of the material, documents, items, or communications for  
25  
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1 which protection is not warranted are not swept unjustifiably within the ambit of this  
2 agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
4 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*,  
5 to unnecessarily encumber or delay the case development process or to impose  
6 unnecessary expenses and burdens on other parties) expose the designating party to  
7 sanctions.

8 If it comes to a designating party's attention that information or items that it  
9 designated for protection do not qualify for protection, the designating party must  
10 promptly notify all other parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
12 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated  
13 or ordered, disclosure or discovery material that qualifies for protection under this  
14 agreement must be clearly so designated before or when the material is disclosed or  
15 produced.

16 (a) Information in documentary form: (*e.g.*, paper or electronic  
17 documents and deposition exhibits, but excluding transcripts of depositions or other  
18 pretrial or trial proceedings), the designating party must affix the word  
19 "CONFIDENTIAL" to each page that contains confidential material. If only a portion or  
20 portions of the material on a page qualifies for protection, the producing party also must  
21 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the  
22 margins).

23 (b) Testimony given in deposition or in other pretrial proceedings: the  
24 parties and any participating non-parties must identify on the record, during the  
25 deposition or other pretrial proceeding, all protected testimony, without prejudice to  
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1 their right to so designate other testimony after reviewing the transcript. Any party or  
2 non-party may, within fifteen days after receiving the transcript of the deposition or other  
3 pretrial proceeding, designate portions of the transcript, or exhibits thereto, as  
4 confidential. If a party or non-party desires to protect confidential information at trial,  
5 the issue should be addressed during the pre-trial conference.

6 (c) Other tangible items: the producing party must affix in a prominent  
7 place on the exterior of the container or containers in which the information or item is  
8 stored the word "CONFIDENTIAL." If only a portion or portions of the information or  
9 item warrant protection, the producing party, to the extent practicable, shall identify the  
10 protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
12 to designate qualified information or items does not, standing alone, waive the  
13 designating party's right to secure protection under this agreement for such material.  
14 Upon timely correction of a designation, the receiving party must make reasonable efforts  
15 to ensure that the material is treated in accordance with the provisions of this agreement.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a designation  
18 of confidentiality at any time. Unless a prompt challenge to a designating party's  
19 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
20 unnecessary economic burdens, or a significant disruption or delay of the litigation, a  
21 party does not waive its right to challenge a confidentiality designation by electing not to  
22 mount a challenge promptly after the original designation is disclosed.

23 6.2 Meet and Confer. The parties must make every attempt to resolve any  
24 dispute regarding confidential designations without court involvement. Any motion  
25 regarding confidential designations or for a protective order must include a certification,  
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1 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith  
2 meet and confer conference with other affected parties in an effort to resolve the dispute  
3 without court action. The certification must list the date, manner, and participants to the  
4 conference. A good faith effort to confer requires a face-to-face meeting or a telephone  
5 conference.

6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
7 intervention, the designating party may file and serve a motion to retain confidentiality  
8 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The  
9 burden of persuasion in any such motion shall be on the designating party. Frivolous  
10 challenges, and those made for an improper purpose (*e.g.*, to harass or impose  
11 unnecessary expenses and burdens on other parties) may expose the challenging party to  
12 sanctions. All parties shall continue to maintain the material in question as confidential  
13 until the court rules on the challenge.

14 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
15 OTHER LITIGATION

16 If a party is served with a subpoena or a court order issued in other litigation that  
17 compels disclosure of any information or items designated in this action as  
18 "CONFIDENTIAL," that party must:

19 (a) promptly notify the designating party in writing and include a copy  
20 of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or  
22 order to issue in the other litigation that some or all of the material covered by the  
23 subpoena or order is subject to this agreement. Such notification shall include a copy of  
24 this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.



1 Notwithstanding this provision, counsel are entitled to retain one archival copy of  
2 all documents filed with the court, trial, deposition, and hearing transcripts,  
3 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
4 consultant and expert work product, even if such materials contain confidential material.

5 The confidentiality obligations imposed by this agreement shall remain in effect  
6 until a designating party agrees otherwise in writing or a court orders otherwise.  
7

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: July 7, 2020 /s/ Stephanie Stocker (per email consent)  
10 Attorneys for Plaintiff

11 DATED: July 7, 2020 /s/ Judson D. Stelter  
12 Attorneys for Defendant

13 PURSUANT TO STIPULATION, IT IS SO ORDERED

14 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production  
15 of any documents in this proceeding shall not, for the purposes of this proceeding or any  
16 other federal or state proceeding, constitute a waiver by the producing party of any  
17 privilege applicable to those documents, including the attorney-client privilege, attorney  
18 work-product protection, or any other privilege or protection recognized by law.  
19

20 DATED: July 15, 2020

21   
22

23 MICHELLE L. PETERSON  
24 United States Magistrate Judge  
25  
26

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under  
penalty of perjury that I have read in its entirety and understand the Stipulated Protective  
Order that was issued by the United States District Court for the Western District of  
Washington on [date] in the case of *Jeremy De Jong v. Great Lakes Services, LLC*, Case No.  
3:19-cv-05354-RJB-MLP. I agree to comply with and to be bound by all the terms of this  
Stipulated Protective Order and I understand and acknowledge that failure to so comply  
could expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject to  
this Stipulated Protective Order to any person or entity except in strict compliance with  
the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Western District of Washington for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I certify that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF system which will send notification of such filing to the following:

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Attorneys for Plaintiff

Under the laws of the United States of America and the State of Washington, the undersigned hereby declares, under the penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Dated this 7<sup>th</sup> day of July, 2020

/s/Suzanne K. Trotter